Filed 8/9/10 Dermenjian v. Dermenjian CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

VAROUJAN DERMENJIAN et al., Plaintiffs and Respondents, v. ARMEN DERMENJIAN et al., Defendants and Appellants; ADRINE KHANZADIAN et al., Defendants and Respondents.	B218280 (Los Angeles County Super. Ct. No. BC378225)
ADRIANA DERMENJIAN, Plaintiff, v. VAROUJAN DERMENJIAN et al., Defendants.	(Los Angeles County Super. Ct. No. BC378225)
MOVSES DERMENJIAN, Plaintiff, v. VAROUJAN DERMENJIAN et al., Defendants.	(Los Angeles County Super. Ct. No. BC396942)
REZMIK DEKERMENJIAN, Plaintiff, v. VAROUJAN DERMENJIAN et al., Defendants.	(Los Angeles County Super. Ct. No. BC402724)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael C. Solner, Judge. Affirmed.

Ara John Bedrosian for Defendants and Appellants Armen Dermenjian and Sossie Dermenjian.

Geragos Law Group, Matthew J. Geragos; and Christopher L. Campbell for Plaintiffs and Respondents Varoujan Dermenjian, Vernalie Dermenjian and for Defendants and Respondents Adrine Khanzadian and Armen Khanzadian.

Law Offices of Arshak Bartoumian and Arshak Bartoumian for Defendants and Respondents Adriana Dermenjian and Movses Dekermenjian.

Armen Dermenjian and Sossie Dermenjian appeal from a judgment of the Superior Court for the County of Los Angeles, entered July 10, 2009, following a bench trial in case no. BC378225 and three related cases.[1] We conclude that the appellants have failed to demonstrate that the judgment is unsupported by the record or that it resulted from abuse of the trial court's discretion. We therefore affirm.

Statement of Facts and of the Case

The Parties

The parties are five siblings, their spouses, and the adult child of one of them. The siblings and their spouses are Movses Dekermenjian; Varoujan Dermenjian and his wife Vernalie; Armen Dermenjian and his wife Sossie; Adrine (known as Kathy) Khanzadian

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[1] Over the objection of one party, the trial court found that three cases pending in the Superior Court when case no. BC378225 came to trial (nos. BC394755, BC396942, and BC402724) were related cases, and tried the actions together. Case no. BC402724 was later dismissed. The appeal does not challenge this ruling.

and her husband Armen; and Rezmik (known as Garo) Dekermenjian. Adriana Dermenjian, a daughter of Armen and Sossie Dermenjian, is also a party to one or more causes of action of the complaint, cross-complaint, and related actions. Zvart Guedikian, a daughter of Kathy and Armen Khanzadian, was initially a party to one or more of the related causes, but was dismissed as a party before the trial.[2] For simplicity, and because the parties' names are rife with spelling inconsistencies in the roman alphabet, we refer to the first names used by the parties unless clarity requires more.

The Appealing Parties

Armen and his wife Sossie filed a timely appeal from the judgment.[3] No appeal was filed on behalf of any other party to the judgment.

The Record on Appeal

The record on appeal contains neither the pleadings nor any other documents that fully identify the issues that were the subject of the trial and are determined by the judgment. The earliest document in the Clerk's Transcript is the trial court's minute order announcing its tentative ruling at the close of the four-day bench trial. The transcript's only other helpful documents are the First Amended Statement of Decision, the Judgment and its notice of entry, and the Notice of Appeal. Thus, with few exceptions, we must guess at the identity of the causes of action, the parties, and the trial court's rulings with respect to each of them.

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[2] According to a brief filed on his behalf in this court, Movses died sometime after judgment was entered. In addition, the party named in the judgment as Catherine Khanzandian is apparently the same as Adrine (Kathy) Khanzadian, and the "Kanzadian" family trust is apparently the same as the "Khanzadian" family trust. If those (or other) clerical discrepancies in the judgment require correction, any request must be directed to the trial court. (Code Civ. Proc., § 473, subd. (d); *Estate of Goldberg* (1938) 10 Cal.2d 709, 716-717; *Estate of Sloan* (1963) 222 Cal.App.2d 283, 292 [superior court has inherent and statutory power to correct clerical mistakes in its judgments or orders].)

[3] Judgment was entered July 10, 2009. Notice of entry was given July 14, 2009. Notice of appeal was filed August 14, 2009, 31 days later.

The Briefs

The parties' briefs do not fill the gap. The appellants' brief's "statement of facts" and "statement of the case" (together only about one-half page) do not outline the cases' status and do not state the relevant facts. They contain no citations to the record. One sentence states that the trial court failed to apply the proper burden of proof and abused its discretion; two additional sentences state that the litigation involved money owed by the plaintiffs and the parties' interests in two properties.

Indeed, appellants' entire opening brief contains no clerk's transcript citations at all, and no reporter's transcript citations to support its factual assertions and arguments. The brief's only reporter's transcript citations are found in a two-page list of approximately 109 page and line citations that reference unexplained snippets of reported testimony, apparently offered to support the brief's argumentative section heading reciting the conclusion that the evidence "show[s] that appellants met their burden" to establish their right to damages and interests in certain properties. Appellants filed no reply brief. These deficiencies in the opening brief violate the California Rules of Court.[4] Although they would justify an order striking the brief (Cal. Rules of Court, rule 8.204(e)(2)(B)), we elect instead merely to note that the unfortunate result of appellants' noncompliance with the rules is this court's inability to fully evaluate the arguments that they might otherwise be in a position to urge. (Cal. Rules of Court, rule 8.204(e)(2)(C).)

The briefs filed in this appeal also include a brief denominated "Respondent's . . . Reply Brief," filed by Adriana and her uncle, Movses. This yellow-covered "Reply Brief" purports to challenge the judgment's failure to order Varoujan and Kathy to provide an accounting to Adriana, and its failure to address certain monetary and ownership issues on behalf of Movses. However, Adriana and Movses are not appellants,

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[4] The rules require that an appellant's opening brief must state the nature of the action and the relief sought in the trial court, it must "[p]rovide a summary of the significant facts limited to matters in the record," and it must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(A) & (a)(2)(C).)

for they neither filed nor joined in any notice of appeal. (Cal. Rules of Court, rule 8.100(a)(1).) And their brief is not actually a reply brief at all, for it was filed before the brief of the respondents (Varoujan and his wife, and Kathy and her husband); it bears a cover of a color designated by the rules for a respondent's brief rather than a reply brief (Cal. Rules of Court, rule 8.40(b)(1)); and—most significantly—it does not purport to reply to anything.

Nor are Adriana and Movses actually respondents, for Armen and Sossie (the only appellants in this case) do not challenge any part of the judgment that favors either Adriana or Movses. Their brief does not respond to (or disagree with) anything in the opening brief; it purports to challenge the judgment, rather than to defend it. Adriana's and Movses' brief also contains no statement of facts or of the case, no citations to the clerk's transcript, and no explanation of the purpose for its handful of reporter's transcript page citations.

Because neither Adriana nor Movses filed or joined in a timely appeal from the judgment, we are constrained to disregard their "reply" brief to the extent it requests affirmative relief. (Cal. Rules of Court, rule 8.100(a)(1).)

The Underlying Disputes

The related actions tried in the trial court sought to quiet title and to settle accounts with respect to the parties' interests in four properties—referred to as the Mariposa, Archwood, Monroe, and Melrose properties—formal title to which are held in the names of one or more of the parties.

As the five siblings all agreed, they had always had very close familial bonds (at least until shortly before this lawsuit was filed in September 2007). As a matter of family identity as well as personal pride, the siblings had always trusted and relied on one another in matters of money and property, sharing resources when needed, borrowing and loaning funds among themselves, paying for one another's obligations, and purchasing and holding title to properties for one another's benefit—all without regard to formal documentation. Varoujan described the extended family's finances as "one pocket." Examples abound throughout the record.

The Mariposa property

Most or perhaps all of the siblings had resided at one time or another, rent free, in the family home on Mariposa, either before reaching adulthood, for a time after moving to the region from another city or country, or—in the case of Movses and sometimes Garo—as adults before and after their mother's death in 1994.[5] In April 1978, after their father had died, their mother transferred the family home by grant deed to Varoujan, Kathy, and their respective spouses. Their mother continued to live in the Mariposa house until she died in 1994.[6]

Most of the parties' attempts to elucidate their mother's intentions with respect to the transfer were prevented by rulings on evidentiary objections (from which no party has appealed). It is fair to say, however, that the testimony—if it had been believed and accepted by the trial court—might well have been sufficient to support (but not to compel) a determination that all members of the family had understood and agreed among themselves that they would share equally in the benefits of the property's ownership, notwithstanding that record title was held by just two of them. The record might well also contain substantial (but not conclusive) evidence that the parties' conduct (including payment of mortgage and other expenses, and use of the property as security for bank loans) had been consistent with such an understanding, and that some or all of them had admitted as much.[7]

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[5] Since 1973, Armen and his family have lived in Fresno. By the time of trial, his daughter Adriana had enrolled in USC and had moved to the Los Angeles area. The other siblings lived in the Los Angeles area. The evidence indicates little or no personal involvement by Garo in the various transactions involved in this matter; he apparently suffers from substantial health problems, and for some time had lived apart from the family.

[6] Kathy and her husband apparently later transferred their interests in the Mariposa property to a family trust. Because the record is incomplete and the transfer has no impact on the issues in this appeal, we do not differentiate between the Khanzadian parties and their family trust.

[7] The siblings' descriptions of their understanding sometimes included Garo, but sometimes did not.

The Archwood property

In April 1983, title to a six-unit shopping center property on Archwood in Van Nuys was purchased for about $120,000. Although Armen arranged the transaction, title was taken in one-third interests, in the names of Varoujan and his wife, Kathy and her husband, and Movses. Armen claimed that he had omitted himself from record title in order to avoid the risk that his interest might be subject to a community property claim if his then-still-recent marriage to Sossie were to fail.

In 2004, Movses recorded a deed transferring his interest in Archwood to Adriana, apparently in order to avoid probate complications in the event of his death. According to both Movses and Adriana, the transfer was revocable on demand by Movses, and Movses apparently continued to receive his share of the Archwood income after the transfer of title. The transfer was not revealed, even to Adriana, until 2006, and was discovered by Varoujan and Kathy only in 2007, when the transfer's recording resulted in a vastly larger property tax assessment.

It was undisputed that Movses, Veroujan, Armen, and Kathy each contributed $5,000 to the $20,000 Archwood down payment; however according to Varoujan and Kathy, Armen's contribution was not an investment, but was just a loan to assist the others with the purchase. The parties agree that Armen was instrumental in negotiating and the purchase and in renegotiating the terms and paying the sellers' balloon payment after 10 years (though it is disputed whether he was reimbursed for his payments). And they also agree that for many years, until the September 2007 lawsuit was filed, the Archwood proceeds were used to pay some or all of the Mariposa mortgage and expenses, and the remaining proceeds were distributed equally (or almost equally)—about $1,600 per month each—to Movses, Veroujan, Armen, and Kathy. Again, although much of the evidence was hotly disputed, it is arguable that substantial evidence would support a determination that the parties intended that the benefits of ownership of

the Archwood property would be shared equally by Movses, Varoujan, Armen, and Kathy.[8]

The deeds reflecting record title to the Mariposa property in the names of Varoujan and his wife, and Kathy and her husband, and showing record title to the Archwood property in three equal shares in the names of Varoujan, Kathy, and Adriana, were received into evidence without objection.[9]

As best we can discern from the incomplete record, Varoujan and his wife initially sued to quiet title with respect to the Mariposa and Archwood properties, as shown on the record title. Other members of the family, including Armen, Movses, and Adriana, opposed these claims, and sought reformation and to impose constructive or resulting trusts reflecting their claimed interests in the Mariposa and Archwood properties consistent with the siblings' respective contributions and understandings of their interests. They apparently also asserted claims for unjust enrichment and for an accounting. Armen additionally sought repayment from Varoujan and from Kathy for a number of claimed loans, and Adriana sought an accounting with respect to Archwood distributions.[10]

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[8] Armen (and others) relied heavily upon the equal distributions to him as proof of their common understanding of his one-fourth ownership of the Archwood property. But according to Varoujan and Kathy, while the payments to Movses, Veroujan, and Kathy represented profit distributions to the owners, Armen was paid essentially the same amounts only because he was their brother, and as compensation for his assistance with the property's management.

[9] Exhibits 1 though 8a apparently contain the documents reflecting record legal title to these and other properties. The only exhibit that has been transferred to this court is a written guarantee executed by Kathy for a $20,000 loan Armen had made to her son Miro. (See Cal. Rules of Court, rule 8.224.)

[10] The related actions also involved claims of interests in two other properties, known as Melrose and Monroe. Movses asserted a 50 percent interest in Melrose, claiming that he had transferred his share to Varoujan only to avoid an IRS lien. And Varoujan sought 50 percent of the Monroe property, claiming that he had transferred that interest to Movses' name only to avoid problems refinancing the property. The judgment quiets title to each of these properties as reflected in the record title; neither Varoujan nor Movses has appealed.

Discussion

After hearing four days of conflicting testimony, the trial court observed, wisely, that this case is a poster child for the reasons that we as a society have adopted a comprehensive system requiring that real property transactions must be documented by formal written and recorded instruments. These formalities of documentation are important because they obviate uncertainties and disputes about ownership that may arise from misunderstandings, from mis-recollections and from fabrications; and they provide parties and courts with clear means by which to establish ownership without resorting to often-inadmissible hearsay evidence. As the court noted, the absence of written deeds reflecting the transactions "gives rise to all kinds of arguments and contentions as to what agreements may have been," and under the rules of evidence "it allows someone to just say, well, so-and-so told me that this was the case, and we accept that as being the truth. Then this whole system is disrupted."

While the trial court recognized the potential applicability of the law of constructive trusts to the facts asserted by some of the parties, it ultimately concluded that in the face of the disputed testimony and interpretations, the court was "unable to attach any greater credibility to the submission of oral testimony proffered by either side[.]" It simply could not tell which inferences to draw and which to reject, or whose position to credit and whose to disbelieve.

It is not this court's role to fill that gap.

That gap is addressed in our law by the burden of proof. Broadly stated, it was Varoujan's burden to present evidence sufficient to support his position, and in addition, to actually persuade the court that title should be quieted to reflect his equal ownership of the Mariposa property with Kathy, and to reflect his ownership of the Archwood property in equal one-third shares with Kathy and Movses (or Adriana). (Evid. Code, § 500.) By the same token, in order to prevail Armen had the burden of persuading the trial court that reformation of constructive or resulting trusts should be imposed in his favor, notwithstanding that the record title for the Mariposa and Archwood properties

admittedly show no interest in his name; and to persuade the court that he was entitled to monetary relief from Varoujan and Kathy as a result of his loans over the years to them and their children.

Varoujan and Kathy sought to satisfy their burden of proof with evidence that the recorded deeds show title consistent with their position. Armen's contrary evidence was offered to show that equitable relief (such as reformation of those deeds, constructive trusts, or resulting trusts) should be imposed in order to afford him interests in the Mariposa and Archwood properties. That evidence might well have been sufficient to satisfy his burden of proof and to support a judgment in his favor—*if* that evidence had been believed and accepted by the trial court. But the trial court declined to adopt Armen's position, as it was unquestionably entitled to do. The law does not require the court to accept the testimony—even undisputed testimony—of the party who bears the burden of proof. (*Klinker v. Klinker* (1951) 108 Cal.App.2d 122, 124-125 [the burden is on party challenging record title to show that it does not reflect parties' actual ownership of property; trial court may reject testimony of party who bears burden of proof].) Questions of credibility must be resolved in favor of the fact finder's determination, and when two or more inferences can reasonably be drawn from the evidence, the reviewing court may not substitute its deductions for those of the trier of fact. (*Viner v. Untrecht* (1945) 26 Cal.2d 261, 267 [whether evidence is satisfactory to establish resulting trust "'is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal'"].)

Appellants contend also that because it was their burden to prove their claims only by a preponderance of the evidence, not by clear and convincing evidence, the trial court abused its discretion by failing to apply the preponderance of the evidence standard of proof. Their argument fails, for three reasons.

First, the appellants provide no citation to the record showing where (if at all) the trial court applied a clear-and-convincing-evidence standard of proof. They concede that Evidence Code section 662 would require clear and convincing evidence to establish an interest in property contrary to legal title; but they argue that here, because the parties'

title was disputed, proof only by a preponderance of the evidence was required. While it is true that before reaching its decision the trial court had raised the question whether Evidence Code section 662 might apply in this case, nothing in the record shows if, or how, the trial court ruled on that issue. It is appellants' duty to support their assertions of error with appropriate record citations; this court cannot undertake that task for them. (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.)

Second, the argument makes little sense in the context of this case. From the statement of decision it is apparent that because the trial court rejected *all* the testimonial evidence proffered by both sides as not sufficiently credible, leaving undisputed the title shown by the documentary evidence of record title.

Third, appellants elsewhere expressly concede that the trial court "did use the proper legal standard and substantial evidence was presented to show that judgment should be in favor of respondents." That admission, while it is inconsistent with following sentences of their brief, undercuts their contention of error. For the reasons stated above, we therefore conclude that the appellants have identified no application of an incorrect standard of proof, and no abuse of discretion by the trial court. (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449 [when trial court's decision is not outside the bounds of reason and merely shows opportunity for difference of opinion, appellate court may not substitute its judgment for that of the trial court].)

Consistent with its refusal to afford any credence to the oral testimony offered by the parties, the trial court quieted title to the Mariposa property as title is reflected by the recorded deed—which unquestionably constitutes substantial evidence of that property's ownership: in favor of Varoujan and Vernalie Dermenjian, husband and wife, and Armen and Catherine Khanzadian, husband and wife, all as joint tenants. Also consistent with its expressed disregard of the parties' oral testimony, the trial court quieted title to the Archwood property in one-third shares, one-third in favor of Varoujan and Vernalie, and one-third in favor of the Khazadian family trust. The trial court's apparent reliance on the testimony of various parties to conclude that the transfer by Movses to Adriana was not intended to convey actual ownership—and its judgment quieting title in Movses

to a one-third interest in the property—is unexplained; but it is not raised by any party as an issue in this appeal.[11]

Although the deeds undisputedly reflect that Movses' interest in the Archwood property is held of record by Adriana, not Movses, the judgment nevertheless quiets title to that interest in Movses, rather than Adriana. The statement of decision does not address this ruling. Nor did the trial court indicate any basis on which it might have concluded that title should be quieted in Movses' name (although some evidence, if accepted, would tend to show that no real transfer of the interest was intended). But Adriana has not appealed from that ruling, and the issue therefore is not before us. (See Code Civ. Proc., § 906 [reviewing court not authorized to review decision from which appeal could have been, but was not, taken]; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439 [party who has not appealed from judgment may not urge error on appeal].)

The trial court also found the evidence insufficient to sustain the claims for money, accountings, and other such remedies (not specifically identified in the statement of decision or judgment) against Varoujan and Kathy, and entered judgment on those claims in the cross-defendants' favor. While appellants argue that those decisions constitute error and an abuse of discretion, they provide neither citations to the record nor citations to any authority supporting their position. Without that, we will not evaluate whether the record might be sufficient to compel a determination that the trial court erred by denying relief against them with respect to these issues. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 626 [It is appellant's burden to demonstrate the existence of reversible error]; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384 ["We need not consider an argument for which no authority is furnished"].)

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11 Also unmentioned and unexplained is the judgment's determination that "[t]he plaintiff has not sustained their burden of proof on the second cause of action for Quiet Title." Because that adjudication is unchallenged by the appeal, and the record contains no indication what property might be involved in it, we are in no position to evaluate it.

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.